No. 8411.

In the United States Circuit Court of Appeals

For the Ninth Circuit.

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In the Matter of
JOSEPH H. GRANDE,
Bankrupt.

JOSEPH H. GRANDE,
Appellant,

vs.

ARIZONA WAX PAPER COMPANY and STATE PRODUCE EXCHANGE,
Appellees.

PETITION FOR REHEARING.

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To the Honorable Curtis D. Wilbur, Francis A. Garrecht, and Clifton Mathews, Judges of the United States Circuit Court of Appeals for Ninth Circuit:

Comes now, Joseph H. Grande, and presents his petition for rehearing of above cause and in support thereof respectfully shows: That this Honorable Court erred in its opinion in the above entitled case in the following particulars:

I.

In holding that Referee Turnbull made a valid or legal turn-over order.

II.

In holding that the so-called turn-over order of February 4, 1935, is a final order.

III.

In holding "that corporate assets of 'Grande California Inc.' had not been turned over to trustee."

IV.

In holding that "certificate of compliance" was erroneously issued by Referee Turnbull.

V.

In holding that the turn-over order of February 4, 1935, invalidated "certificate of compliance."

VI.

In holding "nor could the improvident issuance of a certificate of compliance affect the validity of creditors' objections", etc. (Opinion, p. 10).

VII.

In refusing to review the attack made by the appellants upon the specifications of Arizona Wax Paper Company, as follows (Opinion, p. 12):

> "We have already set forth the substance of the two sets of specifications and without stopping to discuss the various criticisms offered by appellant we need only to say that the specifications set forth acts in bankruptcy."

VIII.

In holding that (Opinion, p. 12) Shipman as attorney of record for Arizona Wax Paper Company could verify the specifications in behalf of Arizona Wax Paper Company.

IX.

In holding, after quoting part of section 32, Bankruptcy Act, 14, the Court failed to fully consider the attack made by the appellant upon the sufficiency of the objections to the discharge of the bankrupt, as follows:

> "A comparison of the foregoing provisions with the allegations of the specifications filed by the creditors in the instant case will at once disclose that those allegations bring them within the purview of sub-section 4, *supra,* as was reported by the Special Master."

X.

In holding that attorney Shipman, attorney for the trustee, could in the absence of authority of the trustee, file objections to the discharge; that he could appear for two of the creditors as the attorney objecting to the discharge of the bankrupt.

XI.

In holding that the verification of the specifications of Arizona Wax Paper Company was insufficient, and then holding that because the verification of the specifications presented by the Sun State Produce Exchange was good, that

> "therefore, it is unnecessary to consider the attack made upon the verification of the Arizona Wax Paper Company".

XII.

In refusing to pass on objections made to report of Special Master.

XIII.

In refusing to discharge Joseph H. Grande, bankrupt.

We take up the assignments of error *seriatim.*

I.

The Court erred in holding that Referee Turnbull made a valid or legal turn-over order in this:

The order of February 4, 1935, which is found upon pages 3, 4, 5, 6 and 7 of the transcript in nowise responds to essential requisites of a turn-over order as defined by the Courts of the United States. It fails in this, it charges the bankrupt

> "for the purpose of hindering, delaying and defrauding his creditors, assigned, transferred and set over, without consideration, automobiles, cash, merchandise, leases and contracts, to a corporation he then caused to be incorporated, to-wit, the corporation known as Grande California, Inc."

There is no finding here that any automobile, any cash, any merchandise, any leases and/or contracts were assigned or transferred without consideration, or otherwise, to Grande California Inc. To have a finding of the transfer of any property by Grande to Grande California Inc. it must show the number of automobiles, if any, the make of the automobiles, the date when the transfer was made. The Court must take judicial notice of this fact that all automobiles, of whatever make, are registered. If there were any automobiles registered in the name of Joseph H. Grande it was of record and there could not be a transfer except by the registration of the transfer and the delivery to Grande California, Inc. What is true of the automobiles is likewise true of the cash, the merchandise, leases and contracts. It is not enough to say when a person is charged with fraud, or attempt to defraud his creditors by disposing of his property, to sim-

ply say that he disposed of his property using the words, automobiles, cash, merchandise, leases and contracts. That does not identify any particular property whatever and for that reason no property unidentified could be subject to fraud.

The second finding is that these general statements of property were conveyed to Grande California, Inc.

The next finding is that "no person invested any money, either as a contribution to capital assets, or otherwise, to Grande California, Inc." and that "Joseph H. Grande is the owner in fact of said corporation, its corporate stock, and all of its assets." Now that being true, there never was any transfer and could not have been any transfer in law if Grande owned all of the assets, and no concealment.

The next finding is that neither the attorney for Joseph H. Grande, Hazel D. Grande or the secretary of said corporation, invested any money whatever in said corporation.

The next finding is that *"the assets of Grande California, Inc., have not been turned over to the trustee and he has not come into the possession thereof at this time."*

Conclusion: That Grande California, Inc., is the *alter ego* of Joseph H. Grande. If there was any property in the possession of Grande California, Inc. and Grande California, Inc. is the *alter ego* of Joseph H. Grande, the bankrupt, then whatever property that was owned by Joseph H. Grande at any time never passed out of his possession or title and was always in his possession as the *alter ego* of Grande California, Inc. So that if Grande ever did have the property that is ennumerated under the general names of automobiles, cash, merchandise, leases and

contracts and if he created Grande California, Inc. and he was Grande California, Inc. then there never could be in law or in fact any transfer of any property from Grande, the bankrupt, to an identity that was himself. There was no more transfer from Grande according to this finding than there would be from Grande transferring the cash from his left-hand pocket to his right-hand pocket which would not be any transfer at all. Moreover the emphasis that we put upon the defects in this alleged turn-over order is that it does not describe any property. He is charged with having assigned and transferred, for the purpose of defrauding his creditors, automobiles, cash, merchandise, leases and contracts from one pocket to the other still in his possession and under his control. If that state of facts exists, then there was no transfer and could not have been any. To charge a person with having committed a fraud by transferring property from his ownership to the ownership of another, does not establish anything unless the property itself is identified that is the subject of the transfer. So when the finding fails to name any automobiles, any cash, any merchandise, any leases and/or any contracts which were subject of the fraudulent act upon the part of the bankrupt were not named and unidentified, then such a finding is worthless.

There is a rule of law well settled that in the turn-over order in bankruptcy it must point out specifically what property has been concealed and diverted from the bankruptcy proceedings. This rule is fundamental and unless the property is specifically pointed out that is sought to be concealed from the trustee or referee in bankruptcy the order is fatally defective. It is nothing more

or less than a conclusion without any facts upon which to base it.

After the findings and conclusions, Referee Turnbull, on the 4th day of February, 1935, made the following order: "Therefore, it is hereby ordered that William I. Heffron, trustee in bankruptcy, forthwith take immediate possession *of all the assets of the bankrupt, standing in the name of Grande California, Inc.,* whether the same exist at Salinas, California, or elsewhere, and use all necessary force so to do." That order was issued February 4, 1935, and it was the only order issued upon the facts and conclusions found in the turn-over order. Has the Trustee, Heffron, obeyed that order? If he has, then it is no longer of any force or effect. It is not a final adjudication as the Court has held in this opinion to which we will refer later. It was the duty and the only operating force from this order of February 4, 1935, to have the trustee in bankruptcy, act who was directed to go to Salinas, California, or elsewhere and use all necessary force to take immediate possession of all of the assets of the bankrupt standing in the name of Grande California, Inc. If there were no assets standing in the name of Grande California, Inc. then the trustee could secure nothing. In any event, when the order was issued, February 4, 1935, it was the duty of the trustee to act under the order. If he found no property standing in the name of Grande California, Inc. he could not take possession of something that did not exist. If he found property standing in the name of Grande California, Inc. then he was bound to take it. If he could not take physical possession of it then he was to take constructive possession of it. If he was in anywise interfered with in the tak-

ing of the possession of it by Grande, the bankrupt, it was the duty so to report to the Referee. At this time, so far as the record shows, it is still an unexecuted order of the Referee with no disclosure by trustee Heffron of what he has done under the order. It was simply held up before the United States District Court as a danger signal and it has passed onto this Court the same way. What force or significance should be attached to this document of February 4, 1935? It is attached later to the objections to the discharge of the bankrupt without disclosing in anywise to the Court whether the same is a live or a dead order.

In re Max Reinboth et al, 16 L. R. A. (N. S.) 341:

> "A trustee in bankruptcy may be charged with the value of assets which never came into his possession, if he failed in his duty to get them into possession."
>
> "In support of exceptions to the report of a trustee in bankruptcy, evidence is admissible as to property belonging to the bankrupt which the trustee fails to reduce to his possession."

II.

The Court erred in holding the so-called turn-over order of February 4, 1935, a final order. This conclusion is based upon the fact that the District Court denied the application for an order to show cause against the Referee, Turnbull. This so-called turn-over order is neither a final order or a final judgment within the meaning of either one of these terms as announced by the Court. The most that can be said of it is that it has one purpose alone to serve, and that is, if there is any assets of the bankrupt, Grande, standing in the name of

Grande California, Inc., that the trustee must go and get it. To that extent it is a final order but not to be in anywise considered a final judgment. It is simply a judicial order directed not to the bankrupt but directed to the trustee to find out if there is any property of record anywhere in the name of Grande California, Inc., if so it belongs to Grande, the bankrupt, and the trustee should take it. That and that only is the significance of the order.

III.

The Court erred in holding "that corporate assets of "Grande California, Inc." has not been turned over to trustee. This is a finding that is not sustained by any part of the record before this Court. In the findings in the order of February 4, 1935, "that no person invested any money, either as a contribution to capital assets, or otherwise, to Grande California, Inc., either at the time it was incorporated, or at any time since, and that Joseph H. Grande is the owner in fact of said corporation, its corporate stock, and all of its assets," if this finding is true, then finding that the corporate assets of Grande California, Inc. had not been turned over to the trustee would be an absurdity because no specific property of any-kind or character was named as having been transferred and conveyed to Grande California, Inc., that could be by any known process of human reasoning identified as an existing entity. The only apparent thing that Grande California, Inc. possessed was an imaginary holding on the part of the Referee in the order of February 4, 1935. For these reasons no validity whatever can be attached to the order of February 4, 1935, as the same was, as far as the record shows, abandoned both by the trustee

and the Referee and this order is kept before the Court only to mislead and mis-direct the Court away from the real issues involved in this proceedure.

IV.

The Court erred in holding that "certificate of compliance" was erroneously issued by Referee Turnbull." The Bankruptcy Act has provided particular forms of all bankruptcy proceedings. The record in this case discloses, on September 23, 1935, Referee Turnbull signed a certificate of compliance (P. 8, Tr.) and the same was filed on September 26, 1935 with the Clerk of the Court. Within twelve months subsequent, Joseph H. Grande, being adjudged bankrupt filed petition for discharge and order thereon on October 9. 1935.

On October 9, 1935, the order of notice on petition to discharge was filed. Affidavit of publication was filed October 23, 1935 by the Clerk of said Court. General Orders and Forms, under Act of Congress 1898, Section 9614, page 11382, Volume 9, United States Compiled Statutes, 1916, set forth in detail all forms required under the bankruptcy proceeding. The referee's certificate of compliance is form 56, bankrupt's petition for discharge is form 57, specifications of ground of opposition to bankrupt's discharge is form 58. The procedure thus far for the discharge of the bankrupt is regular and unquestioned. Within the time ordered by the Court, to-wit, December 2, 1935, any creditor was given an opportunity to file objections to the discharge of the bankrupt. There are under Section 32, Bankrupt Act Section 14, certain subdivisions or certain definite grounds upon which oppositions may be made to the dis-

charge of the bankrupt. Whatever grounds are named limit the protestant or objector to those particular grounds. No other ground can be considered by the Court than those that are specifically set forth.

> "A specification which merely follows the general language of the statute, without attempting to set forth particular facts, transactions, or details, is not sufficient. In *re Main,* 205 Fed. 421. In *re Mintzer,* 197 Fed. 647. In *re Lewis,* 163 Fed. 137."
>
> "The specifications should be of such a character that their sufficiency may be tested by demurrer or by exceptions analogous to those allowed in equity. *Troeder v. Lorsch,* 150 Fed. 710."
>
> "The specifications must set forth the facts with the same particularity and exactness that are required in an indictment or a criminal information. In *re Levey,* 133 Fed. 572."
>
> "Discharge is a statutory matter, and the court, as well as an objecting creditor, is confined to the specifications of objection. In *re Newmark,* 249 F. 341."
>
> "Specifications of objection to discharge must exhibit, and evidence in support of them must establish, one of the objections to discharge specified in Bankruptcy Act. In *re Brincat* (D. C.), 233 F. 811."
>
> "Specifications of objection to the bankrupt's discharge which are made on information and belief, and enter into no details as to property, etc., are insufficient. In *re Abramovitz* (D. C.), 253 F. 299."

In the specific grounds of opposition to the bankrupt's discharge filed by Arizona Wax Paper Company we specifically direct the attention of the Court to these grounds: (P. 22, Tr.)

1.

"That, within eleven (11) months immediately preceding the filing of the petition herein by the said bankrupt, said bankrupt transferred and concealed his property, with the intent to hinder, delay and defraud his creditors. That such transfer and concealment was accomplished by the bankrupt by the transfer of his assets to a corporation under the name of Grande California, Inc., and was so transferred within said period for the purpose of defrauding his then existing creditors. That at said time, this objecting creditor was a creditor of said Joseph H. Grande. That said Joseph H. Grande has turned over to said corporation more than one dollar ($1.00) in cash, and various other assets."

It will be seen that the first objection is that said bankrupt transferred and *concealed* his property with intent to hinder, delay and defraud his creditors. What follows in this first ground is an attempt to describe the manner and substance of the transfer. The only specific charge is that he conveyed one dollar to the corporation and various other assets. We submit that this allegation is fatally defective and establishes no charge within the meaning of any of the subdivisions unless the Court possibly could consider it under Subdivision 4 of the Act under which charges could be made. Subdivision 4 reads, "at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition transferred, removed, destroyed or concealed or permitted to be removed, destroyed or concealed any of his property with intent to hinder, delay or defraud his creditors." That portion of Subdivision 4 quoted by objector is "said bankrupt transferred and concealed his property, with the intent to hinder, delay and defraud his creditors."

"A specification of objections to a bankrupt's discharge, that at the time of filing his petition he was the owner of a stock of drugs and general merchandise, no part of which was ever delivered to the trustee in bankruptcy, and that the bankrupt now has possession thereof, was insufficient, in the absence of an allegation that he concealed the same, or in any manner prevented the trustee from taking possession thereof. In *re Taplin,* 135 Fed. 861."

2.

The next charge is that the bankrupt transferred property and assets to his wife principally of money for the purpose of defrauding his then existing creditors.

In *re Agenew,* 225 Fed. 650, the Court said (P. 654):

"(4-6) To constitute the punishable offense of having knowingly and fraudulently concealed while a bankrupt from his trustee property belonging to his estate in bankruptcy, such concealment must have been by the bankrupt, or after his discharge, and the property must have been concealed from the trustee, and such property must have belonged to the estate in bankruptcy. The concealment must be knowingly and fraudulently done. The evidence must be clear. It is evident that the specifications of objection should point out or specify what property was concealed, and when, with some reasonable degree of certainty. In *re Meyers* (D. C.), 5 Am. Bank, Rep. 4, 105 Fed. 353."

There is no charge that it was knowingly and fraudulently concealed.

"A statement that the bankrupt has placed his property in the hands of his wife is insufficient. In *re Hill,* Fed. Case No. 6482."

There was no charge in the specifications that (a) it was transferred knowingly (b) or fraudulently nor does it define the property.

> "An allegation which merely states the creditor's belief that the bankrupt owns property which he is concealing and has not listed in his schedule is insufficient. In *re Thomas* (D. C. 1899), 92 Fed. 912."

The charge of concealment is defective in that it is not alleged that the property was knowingly and fraudulently concealed from the trustee after Grande became a bankrupt.

> "The specifications must distinctly allege a concealment of property or that the trustee has been prevented from taking possession of it. In *re Taplin* (D. C. 1905), 135 Fed. 861."

> "It must be alleged that the property has been concealed from the trustee, a charge that it has been concealed 'from his estate in bankruptcy' is insufficient. In *re Adams,* 171 Fed. 599."

> "An allegation that he has 'not offered to surrender all of his property for the benefit of his creditors' and that he is 'withholding property from his creditors' is not sufficient. In *re Hirsch* (D. C. 1988), 96 Fed. 468."

> "Nor is an allegation that the bankrupt, 'with a fraudulent intent, has failed to include in his schedules property belonging to him.' In *re Adams,* 104 Fed. 72."

> "A specification that the bankrupt has falsely set forth in his petition and schedule that he had no property is defective and insufficient; it must specify what property he had. In *re Beardsley,* Fed. Case No. 1183; in *re Rathbone,* Fed. Case No. 11582."

3.

The next charge is that he transferred and concealed a portion of his property, cash in the bank. That is subject to the same objections as Number 2.

4.

The next charge is that he paid more than a dollar on the purchase of automobiles in the name of his wife. While the testimony that the Special Master had in the four volumes referred to in his report is not before this Court yet this being an equity case, it is within the power of this Court to direct that these four volumes of testimony that was before the Special Master be transmitted to this Court and we respectfully ask that an order issue so directing said four volumes of testimony to establish this particular fact, and appellant's counsel states it as a fact upon his professional honor, that the automobiles referred to in the objections to the discharge of the bankrupt, and the trucks referred to, were automobiles and trucks purchased on time from Paul G. Hoffman Co., with the reservation of the title in the seller and that more than one-half of the purchase price was unpaid and during the examination of the bankrupt before Referee Turnbull the record shows that the automobile seller submitted his contracts to the trustee at the suggestion of bankrupt's counsel and offered to deliver to trustee all of the automobiles and trucks mentioned upon the payment by the trustee to the seller, the balance due on the purchase price.

> "A specification of objections to the discharge of a bankrupt on the ground that he had concealed property is insufficient unless it charge the concealment was knowingly and fraudulently done. Specific-

ation that bankrupt had concealed certain property which had previously been transferred to his sister and in which he had a beneficial interest is not sufficient. In *re Opava* (D. C.), 235 F. 779."

5.

The next charge is that he paid more than a dollar on account of real estate purchased in the name of his daughter, Hazel D. Grande.

Under the rule as announced by the Courts, these are all of the grounds upon which any evidence could be offered, even if the allegations were sufficient.

We submit that the defects in these specifications of grounds are as follows:

1. There is no property named or suggested as having been transferred or concealed in the name of Grande California, Inc.

In *re White,* 222 Fed. 688, the Court said (Page 689):

"By a second paragraph of the second specification it is sought to be shown that the bankrupt transferred certain accounts and notes to his wife for the purpose of concealing the ownership; but this is alleged on information and belief; and so of other notes and accounts, no list or memorandum of which is given. Facts stated upon mere information and belief are insufficient upon which to ground specifications in opposition to a discharge. In *re Thomas* (D. C.), 92 Fed. 912."

"It was not intended, by fixing the statutory grounds for opposing a discharge, to afford the objectors opportunity to go upon a voyage of discovery for ascertaining whether, perchance, they might

find something that would defeat the bankrupt's purpose. But, if the bankrupt be guilty of things that render him not entitled to a discharge, they ought to be directly and unequivocally alleged, so that he will be readily apprised of the direct issue as to them, and enabled to concert his defense, and the proof must be clear and convincing, although not beyond a reasonable doubt."

"The third paragraph of specifications No. 2 is of like character to the second, although relating to real property, and is subject to the same criticism."

(5) "The third specification is subject to the criticism that it does not describe any property which it is alleged the bankrupt has concealed with intent to defraud his creditors. *The property is described as a large amount of groceries and merchandise, and unless the description is made more specific the bankrupt is not apprised of what property the controversy is about.*"

In *re Agnew,* 225 Fed. 650, the Court said (Page 654):

"(4-6) To constitute the punishable offense of having knowingly and fraudulently concealed while a bankrupt from his trustee property belonging to his estate in bankruptcy, such concealment must have been by the bankrupt after the filing of a petition against him, while a bankrupt, or after his discharge, and the property must have been concealed from the trustee, and such property must have belonged to the estate in bankruptcy. The concealment must be knowingly and fraudulently done. The evidence must be clear. It is evident that the specifications of objection should point out or *specify what property was concealed, and when,* with some reasonable degree of certainty. In *re Meyers* (D. C.), 5 Am. Bank. Rep. 4, 105 Fed. 353."

In *re Levey,* 133 Fed. 572, the Court said (Page 576):

> "The bankrupt is entitled to have the specifications of objections made so *explicit and definite* that he may have notice of the *exact charge* made and which he is to meet."

If the allegation was susceptible of proof, or if any evidence was admissible in support of such allegation, some property must be designated specifically. An allegation that more than one dollar was conveyed to the Grande California, Inc. would have no force or effect as an accusation. There is no charge that more than one dollar paid to Grande California, Inc. was done fraudulently or dishonestly or for the purpose of beating or defrauding his creditors. The charge that he had transferred money of the value of more than one dollar to his wife before charging that it was done fraudulently is no charge at all, and the further charge that he transferred a portion of his property, cash in the bank and on hand, to Daisy Grande, his wife, and that he made payments of more than one dollar on the purchase of automobiles for his wife and also payments of more than one dollar for his daughter, being separate and distinct allegations, is nowhere charged that it was done fraudulently and therefore would have no force or effect as a ground upon which to base an opposition to a discharge of the bankrupt. The other reference in the grounds of opposition to the Act of February 4, 1935, does not come within any of the subdivisions or grounds upon which a discharge could be opposed. It will be borne in mind and the attention of the Court is specifically directed to this point, to the fact that the Special Master did not confine his hearing to these allegations, neither did this Court consider the sufficiency of

these allegations but relied more specifically upon the erroneous conclusions reached by the Master.

> "Specifications must present adequate statements of issuable facts, and mere statements of conclusions of law are not sufficient. In *re Holman* (D. C. 1809), 92 Fed. 512."

> "The allegations of the specifications must be clear, distinct, specific, and circumstantial, and they must be so precise and full as to inform the bankrupt of the exact charge which he is called upon to refute, and to inform the court of the exact issue to be tried. In *re Wittenberg* (D. C. 1908), 160 Fed. 991."

V.

On page 22 of the Transcript, are the specifications of grounds of opposition to the bankrupt's discharge by the Arizona Wax Paper Company. On page 27 of the Transcript, are the objections of Sun State Produce Company. These objections are identical, word for word. On page 33 of the Transcript, Special Master announced what he considered to be the issues involved under the application for discharge of the bankrupt based under Section 14-b (4) of the Bankruptcy Act, namely,

> "That the bankrupt had at any time subsequent to the first day of the twelfth month immediately preceding the filing of the petition, transferred, removed, destroyed or concealed or permitted to be transferred, removed, destroyed or concealed any of his property, with intent to hinder, delay or defraud his creditors."

This is the limitation of the charges against the bankrupt. Simplified it means "transferred, removed, destroyed or concealed any of his property with intent to

hinder, delay or defraud his creditors." The Special Master had in mind no property of any kind or character but it was a general blanket allegation. Then he recites "upon the evidence adduced, finds as follows:".

The special attention of the Court is directed to these findings. Beginning on page 33 of the Transcript, and page 34 is a mere recital of what was contained in the objections to the discharge of the bankrupt and is almost verbatim taken from the Exhibit "A" which is attached and made a part of the objections of the Sun State Produce Exchange and the Arizona Wax Paper Company. Then further in the finding on the bottom of page 34 is the following:

> "It was further found in said proceedings, in which said findings and order have become final, that said corporation, to-wit; Grande California, Inc., was caused to come into being" etc.

Practically following the order of February 4, 1935, on page 35,

> "It was further the conclusion of the court from the facts and the evidence that said Grande California Inc., was the alter ego of Joseph H. Grande," etc.

Then further on page 35,

> "That the aforesaid findings and order were introduced in evidence, together with the file appertaining to the above entitled case. That the aforesaid findings and order, dated February 4th, 1935, are a part of the file and proceedings had in the above entitled bankruptcy proceedings."

Then it further recites that application to be relieved of the default by the bankrupt.

On page 36 it recites,

"said bankrupt gave and transferred to his wife the sum of $1350.00, and, on the 10th day of October, 1934, the day upon which his petition was filed, and he was adjudicated a bankrupt, he gave to his wife the sum of $750.00. That said bankrupt, when questioned regarding these transfers to his wife, upon the dates aforesaid, gave no explanation of his act or acts and claimed that he did not remember the occurrence. [Tr. January 25th, 1935, pp. 2-3-4.]"

"A statement that the bankrupt has placed his property in the hands of his wife is insufficient. In *re Hill,* Fed. Case No. 6482."

"Nor a charge that, at the time of filing the petition, he owned and possessed property which he has fraudulently concealed and fraudulently failed to inventory. In *re Taplin,* 135 Fed. 861."

This is a recital of the testimony that was taken before Referee Turnbull and which was contained in bulk when offered in evidence by Attorney Shipman at the hearing before the Master and objected to by attorney for bankrupt.

The further recital, page 36, is almost verbat im what is contained in the order of February 4, 1935.

On page 37 the master recites the following:

"The testimony of the bankrupt throughout the proceedings (referring to the proceedings taken prior before Referee Turnbull) showed an entire lack of good faith and desire on the part of the bankrupt to tell the truth about his financial affairs. For example, on p. 90 of the Transcript, when asked:

"Q. What was your income in 1931?

A. I don't know."

and on page 110 of said Transcript at line 22:

"Q. How much did you make in 1931?

A. Well, I could not exactly say.

Q. Well, approximately.

A. I must have made fifteen or twenty thousand dollars.

Q. In 1931?

A. I think so."

And the record is replete with instances of similar kind.

"A few days before referee's hearing on objections to discharge, objectors noticed bankrupts to produce papers, bank books, etc., for three years before adjudication and afterwards, which bankrupts at hearing stated they refused to do, but referee was not moved to compel production of papers and books. Held, there was no refusal 'to answer any material question approved by the court,' within section 14b(6), because of which discharge should be refused. In *re Rea Bros.* (D. C.), 251 F. 431."

"A discharge in bankruptcy cannot be denied, under section 14b, Cl. 3, as amended by Act June 25, 1910, Par. 6, for a false statement not known by the bankrupt to be false. *Doyle v. First Nat. Bank of Baltimore,* 231 F. 649."

"Under section 14b, as amended in 1903 and 1910, discharge cannot be denied because of general materially false statement in writing to commercial agency on which creditor extended credit, but which was not made for specific purpose of obtaining credit. *J. W. Ould Co. v. Davis,* 246 F. 228."

"In regard to questions of fraud, motive, and intent, it is not sufficient to prove merely suspicious circumstances or conduct which wears a sinister aspect. In *re Howard,* 180 Fed. 399."

"A fraudulent conveyance of property must be shown affirmatively, and it is not sufficient that the bankrupt's evidence on his examination tends indirectly to support the contention of the creditors. In *re Ferris,* 105 Fed. 356."

That refers exclusively to the testimony taken before Referee Turnbull and is clearly evident that no such testimony was taken before the Special Master, Dickson. All of the findings of fact of the Special Master appear upon its face not to have been upon new evidence that was introduced or pertinent to the issues involved before the Master. There was not a single witness called and sworn before the Special Master.

The conclusions of law based upon these findings begin as follows:

"From the foregoing statement of facts and testimony adduced at the trial, the Special Master finds" etc.

When he uses the language adduced at the trial, he refers to the trial had before Referee Turnbull and not before him as Special Master.

None of the findings as set forth anywhere approach the grounds of objections for the discharge of the bankrupt. All that the master finds are matters outside of and beyond the jurisdiction of the matters that were submitted to the Master for his consideration. There is no finding that the bankrupt transferred, removed, destroyed

or concealed any of his property with the intent to hinder, delay or defraud his creditors. The conclusions of law drawn by the Special Master are that notwithstanding the Sun State Produce Exchange was a dissolved corporation yet under Section 399 Civil Code it could collect its debts, dispose of and convey its property, that the Sun State Produce Exchange is a creditor of bankrupt and can "present the objections in the instant proceeding to the bankrupt's discharge." Further conclusion that the order of February 4, 1935, "is a final order," that he assigned "automobiles, cash and merchandise, leases and contracts to a corporation known as Grande California, Inc." Further conclusion, "That such acts took place within the period specified by Paragraph 14-b (4) of the bankruptcy Act." And the further conclusion, "That the bankrupt, within a time the first day of which was subsequent to the first day of twelve months immediately preceding the filing of the petition in bankruptcy, transferred, removed and concealed his property with the intent to hinder, delay and defraud his creditors." This is the end of the judgment or report on the objections of the Sun State Produce Exchange.

Aside from the first paragraph of the findings of facts of the Arizona Wax Paper objections, the balance of the findings are identical with the findings of the Master in the objections made by the Sun State Produce Exchange with the exception of the last paragraph of the findings on page 37. The conclusions of law, page 43 of the findings of the Special Master upon the Arizona Wax Paper Company objections, aside from the first paragraph are identical with the conclusions reached in the objections of the Sun State Produce Exchange. The Special Master concludes his report as follows:

"For the foregoing reasons, your Special Master recommends that the discharge of the bankrupt be denied." "All papers are returned herewith as shown on the record of proceedings which accompanies this report, together with the reporter's transcript (four volumes).

Dated at Los Angeles, California, this 6th day of August, 1936.

Hugh L. Dickson,
Special Master."

The report was filed the same day.

It will be seen beyond question by the report made by the Special Master that no evidence of any kind or character, oral or written, was submitted to the Master on any grounds named in either of the specifications of objections to the discharge made by the Arizona Wax Paper Company or the Sun State Produce Exchange. The specific charges cited in the Sun State Produce Exchange objections were that Grande conveyed to Grande California, Inc. one dollar and various other assets; that he gave to his wife a portion of his property, cash in bank and on hand; that he concealed the title in said property in Daisy Grande's name; that he gave her more than one dollar on account of the purchase of an automobile; that he gave his daughter one dollar on account of purchase of real estate, concealed the title to the property in the name of Daisy Grande. Not a solitary word of concealment or any fact to establish concealment either fraudulently or otherwise was offered in evidence at the trial before the Special Master and the record clearly shows that all of the evidence that was offered before the Master was the Four Volumes of testimony taken before Referee Turn-

bull during the prior hearing of the bankruptcy proceedings. No evidence of any kind or character was offered before the Special Master other than what was offered before Referee Turnbull during the progress of the bankruptcy hearing. The Special Master simply took the records and files in the case offered in evidence by Attorney Shipman, over the objection of bankrupt's counsel, accepted the same in evidence and then based his findings of fact and conclusions of law upon the hearing that was had before Referee Turnbull. He reviewed the testimony given before Referee Turnbull and passed upon the order of February 4, 1935, and declared it a final order.

"New Master can not use the testimony of the former Referee." 162 Fed. 982.

"Notice of application for discharge in bankruptcy is jurisdictional. In re Sykes, 106 Fed. 669."

"As the discharge in bankruptcy is a general privilege and right, the burden rests on a creditor objecting to a discharge to show that the bankrupt is not entitled thereto. Horner v. Hamner, 249 F. 134."

"In view of presumption of honesty, creditors opposing discharge on ground that bankrupt had been guilty of fraudulent transfer of his property have burden of proof. In re Braun, 239 F. 113".

"The testimony of third persons, taken on examination before the referee, is not admissible. In re Goodhile, 130 Fed. 782".

"Creditors objecting to the bankrupt's application for discharge have the burden of proof, and must sustain the allegations of their specifications by satisfactory and convincing evidence, so as to show clearly the existence of one or more of the statutory

grounds for refusing a discharge. Poff v. Adams, Payne & Gleaves, 226 Fed. 187."

"On this hearing only such grounds of objection to the bankrupt's discharge may be heard and considered as have been set forth in the specifications of the opposing creditors, and the evidence will be confined to the material facts alleged in the specifications. In re Taplin, 135 Fed. 861".

VI.

The Court erred in holding that "the certificate of compliance was improvidently issued." This was clear and unquestioned error. We have already called the attention of the Court to the fact that the Supreme Court of the United States has settled as forcefully as though it was an act of Congress the forms to be used in every proceeding in bankruptcy and among those forms is form 56. The law provides that the Referee shall fill out this form, not as is indicated in the appellee's brief as ex-parte procedure, but it is issued upon the authority of law, When the Referee signs a certificate of compliance it carries the same validity that any other order of the Referee carries. It is of like dignity with the turn-over order and might be rightfully said to be paramount to the turn-over order, and it is the foundation upon what the petition for discharge is based and when it comes to the Judge of the Court it comes with the same dignity, solemnity and verify that any other order is presented to the Court. This must be conceded. Until the certificate of compliance is attacked and set aside it is binding upon every person connected with the bankruptcy. The law, however, has provided that all creditors must be given notice and the method of giving notice to them is like-

wise provided so that the creditors if they so desire have open to them an opportunity to question the sufficiency of the certificate of compliance and unless they attack the sufficiency of the certificate of compliance then it must be given the same force and credit, to what is called by the appellee, a final judgment. The Court further says, in its opinion, page 10:

> "But even if the first referee was in error in issuing this certificate of compliance, such error cannot affect the validity of the prior turnover order, which, as we have seen, had become final. 'The referee himself could not set it aside.'"

We call the attention of the Court to the opinion of the United States District Judge, denying the application of the appellant for extension of time to file petition for review of Referee's order of February 4, 1935. This order has been at all times since its confirmation by the Court on February 27, 1935, the ground-work upon which the appellee has maintained its position. We call the attention of the Court to the following language, on page 16 of the transcript of the record:

> "Considering the merits of the case, it is not made to appear that injustice will result to the bankrupt by the enforcement of the order."

This observation of the District Judge indicates that the denial of the extension of time should not work any injury to the bankrupt, and was not regarded by the Court as foreclosing any right to a full and complete hearing in behalf of the bankrupt, or that it would be regarded as a final judgment that would in anywise impair the rights of the bankrupt. It will be observed, however, that the contrary view was taken by the appellee,

and the main and full force of his response to this appeal is based upon the fact that this opinion of the District Court is a final judgment that precludes the Court of Appeals from fully considering all of the facts that would necessarily come before the court on an appeal, and we are under the impression that this thought is entertained by the Appellate Court, in the following language on page 10 of the opinion:

> "Both as to the procedural ground and as to the merits, the appellant has wholly failed to establish that the learned District Judge committed an abuse of sound judicial discretion in denying the appellant's motion for an order to show cause why the latter should not be granted an extension of time," etc.

While the District Court entertained the view that a denial of the application would not do an injustice to the bankrupt, it is further observed by this Court, on page 10 of the opinion, that

> "even if the first referee was in error in issuing this certificate of compliance, such error cannot affect the validity of the prior turnover order, which, as we have seen, had become final."

It is further observed by this Court:

> "It may readily be conceded that this certificate is inconsistent with the recitals in the prior turnover order, with the report of the second referee as special master, of August 6, 1936, and with the court's order denying a discharge".

We call the attention of the Court to this fact, that the turnover order was made on February 4, 1935, and the Referee's certificate of compliance was dated September

23, 1935; that the appellant was entitled to a discharge in bankruptcy. Then the Court concludes that this is "inconsistent with the recitals in the prior turnover order." That is true, but the question then arises, which order should prevail? Then the Court says:

> "even if the first referee was in error in issuing this certificate of compliance, such error cannot affect the validity of the prior turnover order, which, as we have seen, had become final".

Let us test these two statements of the Court. The turnover order, even if it was conceded by appellant to be within the meaning of the law a turnover order, and then a subsequent order was made by the Court, as was made on the 23rd of September, 1935, saying [Tr. p. 18]:

> "that so far as appears from the records and files of my office and matters coming to my attention said Bankrupt has complied with all the orders of the Court and the requirements of the Bankruptcy Act and has committed none of the offenses and done none of the things prohibited by said act".

It cannot be presumed, under the certificate of compliance of September 23, 1935, that the prior turnover order had not been complied with. If the two orders, standing alone, as they do in this record before the Court, and the Court is called upon to pass upon the orders, it must meet these orders in the following manner: First, the Referee made the turnover order on February 4, 1935. On September 23, 1935, it made an order of compliance. How are these two orders to be reconciled? They must be reconciled as follows: First, that the Referee made the turnover order; second, that it made a compliance order. Full faith and credit must be given to the Referee who

made these two orders; full faith and credit must be given to each of the orders. The presumption must follow, then, that the turnover order has been complied with, otherwise the Referee would not and could not make the certificate of compliance.

Now, how can the Court assume the following on page 10 of its decision?

> "But even if the first referee was in error in issuing this certificate of compliance, such error cannot affect the validity of the prior turnover order, which, as we have seen, had become final".

The Court cannot assume, upon the record before it, that the Referee was in error in issuing the certificate of compliance. There is nothing in the record to show, or to rebut the presumption, that the turnover order was complied with. On the contrary, giving full faith and credit to the conduct of the Referee, the presumption of law is that he would not have issued the compliance order unless the turnover order had been complied with. Now, how can the appellee meet and defeat this presumption of regularity in the certificate of compliance? He can only meet it in this way: First, in his objection to the discharge of the bankrupt, he must attack the certificate of compliance, and set forth in his protest against the discharge of the bankrupt that the Referee erred in issuing the order of compliance. Among the things that he must show, first, it is incumbent upon the protestant to show that the turnover order has not been complied with; second, he must show some act on the part of the trustee to get possession of the property embodied in the turnover order and that the bankrupt, or those who were

acting in concert with the bankrupt, prevented the turnover order from being complied with. Until this is done the certificate of compliance must prevail and the protest is of no force or effect.

The order of February 4, 1935, is as follows:

> "Therefore, it is hereby ordered that William I. Heffron, trustee in bankruptcy, forthwith take immediate possession of all of the assets of the bankrupt, standing in the name of Grande California, Inc., whether the same exist at Salinas, California, or elsewhere, and use all necessary force so to do".

Following this is an injunction order, restraining Grande, the bankrupt, and other persons from interfering with the possession, use and occupation of the assets of the Grande California, Inc., by the trustee in bankruptcy. These are the only orders made under the turnover order of February 4, 1935.

This turnover order is found on page 7 of the transcript. On page 22 is the ground of opposition to the bankrupt's discharge filed by the Arizona Wax Paper Company, a co-partnership. On page 27 is the opposition to the bankrupt's discharge filed by the Sun State Produce Exchange, a corporation. In each of these protests the order of February 4, 1935, is made a part by attaching the same as Exhibit "A" to each of the protests, but there is no allegation that the order of February 4, 1935, has not been complied with. It is true that they attach to each of the protests the order of February 4, 1935, and to a certain extent describe the order in the protests, but, so far as any allegation in the protests that the order of February 4, 1935, has not been complied with,

there is absolute silence. More than that, there is no claim made anywhere in the protests that the order of compliance of September 23, 1935, was erroneously issued, or in anywise attacked on any ground whatever.

VII.

The Court was in error in refusing to review the attack made by the appellants upon the specifications of Arizona Wax Paper Company (page 12 of the Opinion) as follows:

> "We have already set forth the substance of the two sets of specifications and without stopping to discuss the various criticisms offered by appellant we need only to say that the specifications set forth acts in bankruptcy."

The Court was in error and it is clearly admitted that they have failed to pass upon the objections made to the specifications by the appellant. The mere recital of the substance of the two specifications does not pass upon the sufficiency of the specifications as a matter of law. The appellant has already pointed out what the opinions of the various Federal Courts have declared what specifications should be in order to have a valid objection to the discharge of the bankrupt. Moreover the law contemplates nowhere that it is sufficient in any opinion that "the specifications set forth acts in bankruptcy". Every decision that passes upon the objections, passed upon the specific objections made to the discharge of the bankrupt which seems to be the essential requisite in order that the bankrupt may have a full and fair hearing before the Court.

VIII.

The Court erred in holding (page 12 of Opinion) that Shipman as attorney of record for Arizona Wax Paper Company could verify the specifications in behalf of Arizona Wax Paper Company.

"Specifications of objection to the bankrupt's application for discharge must be verified under oath by the objecting creditor. In re Brown, 112 Fed. 49; in re Gift, 130 Fed. 230; In re Servis, 140 Fed. 222.

"Specifications of objection should not ordinarily be signed and verified by attorneys at law or in fact for objecting creditors, instead of by the creditors themselves, but may be so signed under exceptional circumstances. In re Milgraum & Ost, 129 Fed. 827. In this case, the reason why the verification is made by counsel instead of by the creditor in person should be explicitly stated in the affidavit. In re Randall, 159 Fed. 298; in re Baerncopf, 117 Fed. 975."

"Attorneys, solicitors, or other agents should not be allowed to verify the specifications, unless in pursuance of a previous order of court allowing them so to do, and in that event both the order and the oath must state the reasons. In re Glass, 119 Fed. 509".

"Specifications of objections to the bankrupt's discharge, which are made on information and belief, and enter into no details as to property, etc., are insufficient. In re Abramovitz (D. C.) 253 Fed. 299."

"A specification which states the facts only on information and belief is insufficient. In re White (D. C. 1913) 222 Fed. 688".

IX.

The Court erred, after quoting part of section 32, Bankruptcy Act 14, in failing to fully consider the attack made by the appellant upon the sufficiency of the objections to the discharge of the bankrupt as follows:

> "A comparison of the foregoing provisions with the allegations of the specifications filed by the creditors in the instant case will at once disclose that those allegations bring them within the purview of Subsection 4, supra, as was reported by the Special Master." (Page 12 of the Opinion of this Court.)

The Court failed to pass on each ground of objections made by the creditors. Section 32, Bankrupt Act 14, points out specific grounds upon which objections to the discharge of a bankrupt must be made. There is no general or blanket ground that can be made, neither can the Court in passing upon the objections say (if the Court follows the law) "the allegations of the specifications will at once disclose that those allegations bring them within the purview of subsection 4 as was reported by the Special Master". Each specific objection must be taken up and must be tested by the law on every separate and specific ground.

> "As one of the great objects of the Bankruptcy Act was to release honest and insolvent debtors from their debts, the right given to secure a discharge ought to be liberally construed. In re Jacobs, 241 Fed. 620."

> "Under the present Bankruptcy Act, a discharge is a legal right, unless some objection is filed and affirmatively sustained for reasons specifically enu-

merated in section 14 of the Act. In re Kaufman, 239 Fed. 305; In re Whitney (D. C.) 250 Fed. 1005."

"It will be observed that the procedure for the discharge of a bankrupt is technical in character, or what is considered as strictly legal procedure. First, the petition must be filed within a twelve months period. Beyond that time there must be a strong showing in order to retain jurisdiction. Notice of petition for discharge is considered as a pleading within the meaning of the bankruptcy law therefore should be verified under oath. In re Taylor (D. C. 1911) 188 Fed. 479."

"Notice of application for discharge in bankruptcy is jurisdictional. In re Sykes, 106 Fed. 669".

"The trustee can not interpose an objection to the bankrupt's discharge until he shall be authorized to do so at a meeting of the creditors called for that purpose. In re Reiff, 205 Fed. 399."

"If no objection is made to the bankrupt's application for discharge is filed the Court will not of its own motion refuse a discharge although it may appear that the bankrupt has committed some act which would deprive him of the right to a discharge if properly specified and proved. In re McDuff, 101 Fed. 241".

"Specifications must present adequate statements of issuable facts, and mere statements of conclusions of law are not sufficient. In re Holman (D. C. 1809) 92 Fed. 512."

"The allegations of the specifications must be clear, distinct, specific, and circumstantial, and they must be so precise, and full as to inform the bankrupt of the exact charge which he is called upon to

refute, and to inform the court of the exact issue to be tried. In re Wittenberg (D. C. 1908) 160 Fed. 991".

"A specification which merely follows the general language of the statute, without attempting to set forth particular facts, transactions, or details, is not sufficient. In re Main, 205 Fed. 421; In re Mintzer, 197 Fed. 647; In re Lewis, 163 Fed. 137".

"On the trial of a bankrupt's application for discharge, to which creditors have filed specifications of opposition, the testimony must be strictly confined to the issues raised by the specifications, and evidence will not be received which relates to grounds of objection not set forth in the specifications, or which relates to transactions outside the scope of the matters alleged. In re Felts, 205 Fed. 983".

"It is necessary, not only that the opposing creditors should specify some one or more of the statutory grounds for refusing a discharge, but that the particular charge should be sustained by the evidence, that is, each of the constitutent elements of the offense or wrongful act alleged against the bankrupt must be supported by proper evidence and satisfactorily proved. In re Brockman, 168 Fed. 1015".

"The allegations contained in the creditors' petition in involuntary bankruptcy, on which the adjudication was made, are not evidence against the bankrupt on his subsequent application for discharge, even though he suffered the adjudication to go by default. In re Lathrop, Fed. Cas. No. 8105".

From the above cases cited it will be clearly seen that an objection to the discharge of a bankrupt is no mere privilege that can be lightly treated.

X.

The Court erred in holding that Attorney Shipman as attorney for trustee could at the same time appear as such in acting as attorney for objectors to the discharge of the bankrupt when the trustee himself could not appear in behalf of the creditors except upon a majority vote of all the creditors called for that purpose.

> "The trustee can not interpose an objection to the bankrupt's discharge until he shall be authorized to do so at a meeting of the creditors called for that purpose. In re Reiff, 205 Fed. 399".

If the trustee can not appear to make the objection to the discharge of the bankrupt except upon due authority delegated to him by the majority of the creditors, then surely his attorney could not so appear.

> "Under the explicit language of the bankruptcy act, the bankrupt's application for discharge must be heard and determined by the judge of the court of bankruptcy, not by the referee. The latter officer has no jurisdiction either to grant or to refuse a discharge, but this duty is cast upon the judge, who must either hear the case originally or upon the report and recommendations of the referee or a special master, and render the decision. In re Taylor, 188 Fed. 479. All questions on application for discharge are originally for the court and not for the referee. In re Hockman, 205 Fed. 330. While this duty can not be delegated yet, when specifications in opposition to the bankrupt's application are filed, it is in the power of the judge to refer the issues raised thereby to the master, with instructions to ascertain and report the facts. Fellows v. Freudenthal, 102 Fed. 731".

"The district judge held bound to pass an independent judgment on an application for a bankrupt's discharge, regardless of the report of a referee. International Harvester Co. of America v. Carlson, 217 Fed. 736".

"On this hearing only such grounds of objection to the bankrupt's discharge may be heard and considered as have been set forth in the specifications of the opposing creditors, and the evidence will be confined to the material facts alleged in the specifications. In re Taplin, 135 Fed. 861".

XI.

The Court erred in holding, that the verification of the specifications of Arizona Wax Paper Company "was insufficient", and then holding that because the verification of the specifications presented by the Sun State Produce Exchange was good, that "therefore, it is unnecessary to consider the attack made upon the verification of the Arizona Wax Paper Company". Each of the objecting creditors have filed a separate and distinct objection. The Arizona Wax Paper Company has simply filed specifications against the discharge of the bankrupt on its own account alone and while the bankrupt has attacked each objection, each objector and the specifications set forth by each objector, there is an additional objection filed to the objection of the Arizona Wax Paper Company's specifications, to-wit: that the verification of the Arizona Wax Paper Company's specifications is not a verification as the law requires. The law specifically sets forth the verification shall be as follows: (1) By the creditor, (2) that it can not be made on information and belief. There is

no other person authorized, within the construction of the law, permitted to verify the specifications except the trustee when he is duly authorized by a convention of the creditors and he must be expressly authorized before he can verify the specifications. The next condition under which any other person may verify it, is when the attorney verifies it, but there is no provision of the law that modifies the verification so that it can be made on information and belief by anyone whether it is the creditor, the trustee or the attorney, or, in other words, no verification of the specifications against the discharge of the bankrupt can be made upon any other ground than absolute knowledge of the facts sworn to. When the attorney makes the verification he must (1) first obtain an order of court upon application to the court permitting him to verify the specifications. (2) The Court may grant the application, and in addition to granting the application there must be a certificate issued by the court showing that the attorney may verify the specifications, but the verification must disclose the following facts, before the attorney can verify it: (a) that the creditor is unable to verify it and the reasons he is unable to do so must be set forth; (b) the attorney must set forth the fact that he is attorney for the creditor and that the matters set forth in the specifications and objections to the discharge of the bankrupt are matters within his own personal knowledge; and after hearing the application then the Court exercises its discretion as to whether it will issue the order permitting the attorney to make the verification, and if granted a record of the same must be made in the minutes of the Court in the bankruptcy proceedings and it is within the discretion of the court as to whether this shall be granted.

The verification of Benj. W. Shipman is as follows [Tr. p 26]:

> "Benj. W. Shipman, first by me being duly sworn deposes and says: that he is attorney in the within matter for the objecting creditor, Arizona Wax Paper Co.; that he has prepared the specifications of grounds of opposition to the bankrupt's discharge; that the co-partners constituting the Arizona Wax Paper Co. are not within the County of Los Angeles and, for that reason, the affiant executes this verification; that the matters set forth therein appertaining to a turn-over order are true of affiant's own knowledge and, as to the other matters of opposition therein set forth, affiant believes them to be true.
>
> BENJ. W. SHIPMAN".

Subscribed and sworn to before a notary public.

The only thing that Shipman swears to is the following:

> "that the matters set forth therein appertaining to a turn-over order are true of affiant's own knowledge",

all the rest is that he believes it to be true. This is the same as though no verification had been made and without a verification the charges would be worthless. There being no verification, as the law required, the Court is without jurisdiction to hear and determine the objections of the Arizona Wax Paper Company to the discharge of the bankrupt. It would be without any merit or legal excuse to say is it is said in the opinion (page 12 of Opinion):

> "We will concede, only for the sake of the argument, that the verification to the objections filed by the Arizona Wax Paper Company is insufficient."

If the verification is conceded to be insufficient "for the sake of argument", it is insufficient for every other purpose and no vitality or validity is to be given to it by saying that another creditor's verification is sufficient and because someone else's verifications to the objections to the discharge of the bankrupt, Sun State Produce Exchange, is sufficient it could not re-vitalize and make valid the objections of the Arizona Wax Paper Company that has no verification. Let us analyze this further, the Court has cited no law to sustain this analogous position. We can not understand or can we believe that the Court would hold that the verification to the objections filed by the Arizona Wax Paper Company is "insufficient" for the sole purpose of having an argument. If it is insufficient, it is insufficient for all purposes, and if it is insufficient, how can it be concluded

> "It therefore is unnecessary to consider the attack made upon the verification of the Arizona Wax Paper Company"?

The only reason given why it is unnecessary to consider the attack upon the verification of the Arizona Wax Paper Company is that some other verification to specifications for objections is correct. Even the verification of the Sun State Produce Exchange does not comply with the rule in bankruptcy procedure. We have been unable to find any opinions anywhere in the Federal Courts that hold that the form of verification under the Code of California is applicable to the verification in a bankruptcy procedure. But wherever this question of verification in bankruptcy procedure has been passed upon at all, we have found the Courts (the District, the Circuit and Supreme Court) have insisted the verification shall not be made on information and belief and the reasons for it are

so apparent that the courts will not tolerate such procedure or give sanction to it. Any specifications of objections against the discharge of the bankrupt that is not verified absolutely as the law requires is no objection at all and is treated as though no objection was made to the discharge of the bankrupt.

> "As one of the great objects of the Bankruptcy Act was to release honest and insolvent debtors from their debts, the right given to secure a discharge ought to be liberally construed. In re Jacobs, 241 Fed. 620."

XII.

The Court erred in refusing to pass on the objections made to the report of the Special Master. The response to the objections of the Special Master is found in this language,

> "they deal chiefly with the contention that the master's findings were not sustained by the evidence adduced before him".

We insist that this is correct. But the Court declines to pass even upon this question first: that the evidence presented before the Referee and Trustee had not been made a part of the record in this Court; second, the appellate courts will not disturb, except for manifest error, findings of fact concurred in by the Referee and the District Judge.

The Court concludes its opinion (page 13 of Opinion):

> "We have carefully read the record here presented, and find no error, manifest or otherwise, in the findings of the special master or in the decree of the lower court, denying the appellant a discharge in bankruptcy".

The appellant has clearly pointed out to this Court that the specifications to the discharge of the bankrupt, both by the Arizona Wax Paper Company and the Sun State Produce Exchange, show upon their face that they are not sufficient within the meaning of the law upon which refusal of a discharge in bankruptcy can be founded. It is admitted and conceded that no evidence was offered before the master except the four volumes of testimony that was taken before Referee Turnbull, all of which was objected to by the appellant's counsel and should never have been considered either by the master or the District Court or this Court in passing upon the issues in this case. As a matter of law and upon the face of the record itself, the transcript shows that the specifications of objections do not meet in any particular the requirements named in the law and sustained by the opinions of the courts that we have cited.

XIII.

The Court erred in refusing to discharge Joseph H. Grande, bankrupt. We base the claim that Grande should be discharged as a bankrupt on what has heretofore been said and also upon the following citation and two concluding cases. These citations summarize the law of bankruptcy and the rights of the bankrupt to be discharged and the facts involved in the cases cited are as nearly applicable to the facts before this Court as it is possible to find cases. The case of *In re Braus* 248 Fed. 55, is a very extensive discussion and the law clearly defined. We respectfully ask the Court to consider this case as the

questions involved therein are almost identical to the case at bar. We are relying in this appeal upon the obvious errors of law rather than questions of fact. While in our brief on appeal we attack the findings of the special master, not as the Court has stated in its Opinion, p. 13, "upon any findings of fact" but rather upon the apparent error of the master in admitting in evidence the four volumes of testimony that was taken before Referee Turnbull and which was not admissible for any purpose because the master was not clothed with authority to review the evidence that was submitted before Referee Turnbull and for that reason the appellant maintain that it was error of law to admit such evidence. While the Court used this language, page 13 "for the rest, they deal chiefly with the contention that the master's findings was not sustained by the evidence adduced before him." The point we make is that there was no legal evidence, or any legal right on the part of the master to pass upon the evidence that was offered before the Referee, Turnbull. We call the attention of the Court to the further observation of this Court as follows: "We are therefore in no position to review the sufficiency of the findings of the referee, acting as special master." If the Court "are therefore in no position to review the sufficiency of the findings of the Referee acting as Special Master" then how can the Court further say "we find no error manifest or otherwise in the finding of the special master." If the Court was "in no position to review the sufficiency of the findings of the referee" then surely they could not conclude

that they "find no error manifest or otherwise in the findings of the special master."

3 R. C. L. Section 131, p. 309 speaks as follows:

"Section 14b provides that the judge shall hear the application and the opposition thereto 'of the trustee or other parties in interest, and shall 'investigate the merits of the application and discharge the applicant unless he has 'done something that brings him within the condemnation of one of the six grounds for refusal of a discharge, which the section proceeds to specify in numbered clauses. The bankrupt is entitled to a discharge as a matter of right unless debarred upon one of the grounds there enumerated. A bankrupt whose want of frankness as a witness is so reprehensible that if discharges were granted only as rewards to bankrupts who freely furnish information to their creditors, he would be pre-eminently disentitled to consideration, cannot for that reason alone be denied a discharge. Originally in bankruptcy laws, the discharge of the bankrupt may have been incidental and the main purpose the equal distribution of his goods among creditors. But in nearly all of the voluntary cases arising under the Bankruptcy Act of 1898 the administration or distribution of the bankrupt's property has been practically concluded before filing the petition, and the sole object of the petitioner is to be relieved of his debts, and the voluntary cases are several times more numerous than the involuntary. It is therefore now asserted by the courts that the relief of the honest, unfortunate and insolvent debtor from the burden of his debts, and

his restoration to business activity in the interest of his family and the general public, is one of the main objects, if not the most important object, of the law. Accordingly the courts adopt a liberal construction of the provisions of section 14 in the matter of the discharge of honest bankrupts."

In re Augustine L. McCrea, 161 Fed. 246, 20 L. R. A. (N. S.) 246:

"A bankrupt cannot be denied his discharge for wilfully refusing to obey an order to produce his books, if they were lost or destroyed by fire."

In re W. A. Liller Bldg. Co. et al., v. Reynolds et al., 247 Fed. 90, the Court held:

"4. To justify the denying of a discharge to the bankrupt on the ground that he transferred property with intent to hinder, delay or defraud his creditors, the transfer must have been effective to place the property beyond the jurisdiction of the bankruptcy court to seize it by summary proceedings. The Court says: the holding herein that the bankrupt attempted transfer of his property to the corporation was in fact no transfer thereof disposes of the objections made to his discharge. He must have actually 'transferred' such property or removed it, so that it will be beyond reach of his creditors and the bankruptcy court's jurisdiction to summarily seize. This I have held he did not do; therefore he is entitled to his discharge, not having violated clause 4, subsection b, subdivision 14 of the Bankruptcy Act (Comp. St. 1916, 9598)."

In re Braus, 248 Fed. 55: The Court held:

1. "Though provisions for discharge were not an incident to the original bankruptcy acts, those provisions should not be construed against the bankrupt, and, if his discharge is to be denied, it must be because there has been strict proof of the evidence of some one of the bars which the statute has provided."

2. "For a bankrupt to be denied a discharge on the ground of concealment of assets, the case must be made out by more than a mere preponderance of evidence."

3. "Evidence held insufficient to show that the bankrupt who transferred his property to a corporation within four months of bankruptcy was guilty of any fraudulent intent to hinder and delay his creditors; the bankruptcy received practically all of the stock of the corporation."

4. "An insolvent debtor has the right of disposing of his property until the commencement of proceedings in bankruptcy against him."

5. "Though it may have that effect incidently, a transfer by an insolvent debtor can not be set aside under Bankruptcy Act July 1, 1898, 541, sub. 67 e, 30 Stat. 564, (Comp. St. 1916, 9651) as one tending to hinder and delay creditors, unless it was made with the intention of unlawfully hindering, delaying, and defrauding creditors."

6. "An insolvent debtor who owned a number of stores organized a corporation of which he held all of the stock except a few qualifying shares held by his wife and another, and to such corporation he transferred the more profitable stores; it being his avowed intention to break the leases on the un-

profitable stores. The bankrupt made no effort to dispose of the stock so received in fraud of creditors, and contended that he incorporated his more profitable business for the purpose of securing additional capital. Held that, where it did not appear that he had any unlawful intention to hinder and delay his creditors, a discharge could not be denied, though the transfer occurred within four months of the filing of the petition, on the ground that he was guilty of a fraudulent transfer with intent to hinder, delay and defraud creditors."

We earnestly ask the Court to grant a re-hearing in this case and either order the discharge of the bankrupt or return the case to the District Court for further hearing.

Respectfully submitted,

JAMES DONOVAN,

Attorney for Petitioner.

Certificate of Counsel.

I, counsel for the above named petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and, in judgment of counsel for petitioner, is well founded, and that it is not interposed for delay.

JAMES DONOVAN,

Counsel for Petitioner.